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IN THE

Supreme Court of the United States

OCTOBER TERM, 1940

No. 773

QUEEN INSURANCE COMPANY OF AMERICA,
Petitioner,

vs.

GUY T. HELVERING, Commissioner of Internal Revenue,
Respondent.

PETITION FOR WRIT OF CERTIORARI

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IN THE

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QUEEN INSURANCE COMPANY OF AMERICA, Petitioner, vs. GUY T. HELVERING, Commissioner of Internal Revenue, Respondent.	No. .....

PETITION FOR WRIT OF CERTIORARI

Your petitioner prays that a writ of certiorari issue to review the judgment of the Circuit Court of Appeals for the Second Circuit entered in the above-entitled cause on November 20, 1940.

Opinions Below

The opinion of the Board of Tax Appeals (R. 118-131) is reported in 40 B. T. A. 483. The memorandum opinion of the Circuit Court of Appeals (R. 220-223) is unreported.

Jurisdiction

The judgment of the Circuit Court of Appeals was entered on November 20, 1940 (R. 223-224). The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code as amended by the Act of February 13, 1925.

Question Presented

Whether the income tax imposed by the Dominion of Canada on the Canadian income of United States insurance corporations allowable as a credit against United States income tax is the full amount of the Canadian income tax liability before deduction of the premium tax, which deduction is permitted under Section 7 of the Canadian War Tax Act, 1917.

Statutes Involved

The material provisions of the United States and Canadian statutes are set forth in the appendix. The Canadian statutes are also contained in full in the record.

The statutory provisions directly involved are as follows:

Section 31 of the United States Revenue Act of 1934, c. 277, 48 Stat. 680, provides:

> "The amount of income, war-profits and excess-profits taxes imposed by foreign countries or possessions of the United States shall be allowed as a credit against the tax, to the extent provided in section 131."

Under the Canadian Income War Tax Act, 1917, as amended, there was imposed a tax of 13½% of petitioner's net income in Canada. Under the Special War Revenue Act, there was imposed a tax of 1% of petitioner's net premiums written. Under Section 6 of the Income War Tax Act, the Special War Revenue tax was not allowed as a deduction in determining net income. However, Section 7 of the Income War Tax Act, 1917, as amended, provided:

> "(7) A taxpayer shall be entitled to deduct from the tax that would otherwise be payable by him under this Act, the amount paid for any corresponding periods under the provisions of Parts II and III of the Special War Revenue Act."

Statement

This is a Federal Income Tax case and involves the income tax liability of the petitioner for the calendar year 1934.

The United States Board of Tax Appeals, in adopting stipulated facts, made substantially the following findings (R. 120-123):

The petitioner is a domestic stock insurance company transacting a fire and marine insurance business in the United States and Canada. It incurred and paid tax liabilities in Canada for 1934 under Part III of the Special War Revenue Act of 1915, as amended, and the Income War Tax Act of 1917, as amended. The actual amount paid under the former was $5,404.94, representing 1% of the net premiums received in 1934 on insurance in Canada. The actual amount paid under the Income War Tax Act was $1,519.11. The Income War Tax Act imposed a tax of 13½% upon the net income of the petitioner in Canada. Its net income, computed in accordance with the Act, was $51,289.23, and the tax at 13½% was $6,924.05. But the Income War Tax Act further provided in Section 7 that:

> "A taxpayer shall be entitled to deduct from the tax that otherwise would be payable by him under this Act, the amount paid for corresponding periods under the provisions of Parts II and III of the Special War Revenue Act."

Since the petitioner had paid $5,404.94 for the corresponding period (1934) under the provisions of Part III of the Special War Revenue Act, that amount was deducted from the tax liability under the Income War Tax Act and only the excess of the liability over the amount already paid was required to discharge the full tax liability of the petitioner.

The Board of Tax Appeals determined that the credit for Canadian income tax allowable under Section 31 of the Revenue Act of 1934 against United States income tax was $6,924.05 and that there was an overpayment of income tax for the year 1934 of $304.51.

The Circuit Court of Appeals reversed the Board's decision (R. 223) and decided that the amount of the credit for Canadian income tax was $1,519.11, the amount of the Canadian income tax liability of $6,924.05, less the tax paid under the Special War Revenue Act of $5,404.94 (R. 220-223).

Specification of Errors to Be Urged

1. The Circuit Court of Appeals erred in failing to hold that the amount which the petitioner was entitled to credit against its United States income tax liability for income taxes paid to the Dominion of Canada was the amount of its liability under the Canadian Income War Tax Act, 1917, before deducting the amount paid under the Canadian Special War Revenue Act, 1915, and erred in holding that the amount of the credit should be limited to the net amount paid under the Canadian Income War Tax Act, 1917, after deducting the amount paid under the Special War Revenue Act, 1915.

2. The Circuit Court of Appeals erred in reversing the decision of the Board of Tax Appeals.

Reasons for Granting the Writ

1. The Circuit Court of Appeals has decided an important question of federal law which has not been, but should be, settled by this Court. Since Congress, in the Revenue Acts of 1936, 1938 and 1940, has re-enacted the provisions granting relief to domestic taxpayers engaged in foreign enterprises by allowing a credit for foreign income taxes

against United States income taxes, such decision materially affects the petitioner's income tax liability for the year 1934 and each subsequent year.

Such decision effectively denies this relief, or reduces it to an absurd minimum in the case of the petitioner and all other domestic insurance companies transacting business in Canada. From an examination of the official insurance reports published by the Department of Insurance of Canada for the year ending December 31, 1939, it has been determined that there are 221 American insurance companies, licensed in Canada. The income tax liabilities of all or most of such companies for each year still open for the determination of income tax liability and for each year hereafter are, or will be affected by the decision on this question.

2. The decision of the Circuit Court of Appeals is contrary to the established practice of the Bureau of Internal Revenue for over twenty years. Congress, in the Revenue Act of 1918, granted relief to domestic taxpayers engaged in trade or business in foreign countries. Such relief consisted in the allowance of a credit against United States income tax of foreign income taxes. For over twenty years, the petitioner, as well as other insurance companies, were allowed a credit for Canadian income taxes in an amount equal to the income tax liability under the Canadian Income War Tax Act, without reduction on account of the amount of tax paid under the Special War Revenue Act. The present decision reverses this practice, although the credit provisions of the Revenue Act of 1934 are not materially, or substantially, different from those in the Revenue Acts of 1918, 1921, 1924, 1926 or 1928. Clearly, any decision which reverses the accepted practice of over twenty years' standing should be carefully and fully reviewed before it becomes the law on the question.

3. The decision of the Circuit Court of Appeals failed to recognize that whether a payment of a foreign tax con-

stitutes a payment of a foreign income tax allowable as a credit under Section 31 of the Revenue Act of 1934, must be determined in the light in which such terms are used in our statute (*Biddle* v. *Commissioner,* 302 U. S. 573).

The Board found the petitioner's net income subject to income tax in Canada to be $51,289.23, upon which the income tax liability at 13½% was $6,924.05. This amount would have been payable had not $5,404.94 already been paid under the Special War Revenue Act and, by the provisions of Section 7 of the Income War Tax Act, was not required to be paid again. The petitioner, having incurred an income tax liability of $6,924.05 for the year 1934, and having paid taxes of such amount to Canada, the total amount so paid was, within the terms of our statute, an income tax.

However, the Court, ignoring the terms of our statute and by following a highly technical construction of the Canadian Act, held that the income tax was the balance or net amount payable after deducting the payment of the Special Revenue Tax from the amount otherwise payable. This conclusion begs the question. True, only the net amount was payable after such deduction, but this was only because the amount represented by the Special War Revenue Tax had already been paid and, therefore, such amount was not payable again. The fact of payment was clearly established, and the Board found that the petitioner paid total taxes of $6,924.05. The Court, however, relying on the words in the Canadian statute "would otherwise be payable" erroneously concluded that only the amount of $1,519.11 was paid as an income tax. Whereas both the payment of $5,404.94 and the payment of $1,519.11 served to satisfy and discharge the income tax liability of $6,924.05.

4. The decision of the Circuit Court of Appeals results in an unjustified discrimination against insurance companies, as may be seen from the following comparison of

a domestic insurance company's Canadian tax liability with that of a domestic non-insurance company:

	Insurance Company	*Non-Insurance Company*
Net profits	$44,365.18	$44,365.18
Add: S. W. R. Tax	5,404.94	.....
Income War Act Tax	1,519.11	6,924.05
Taxable income	$51,289.23	$51,289.23
Tax at 13½%	6,924.05	6,924.05
Less: S. W. R. Act Tax	5,404.94	.....
Income tax payable	$ 1,519.11	$ 6,924.05

Under the Court's highly technical interpretation of the credit provisions, the non-insurance company would be allowed a credit of $6,924.05, whereas the insurance company would be allowed a credit of only $1,519.11. The Court would insist on this discrimination in spite of the fact that the net profit of each company was $44,365.18; the taxable profit, $51,289.23; the income tax liability, $6,924.05; and the tax payments, $6,924.05.

In short, the Court looked to the form of the Canadian taxes paid by the petitioner and not to the substance or effect of such payments. The fact is that the premium tax payments had all the characteristics of an income tax. Such tax was levied on net premiums written—i. e., on gross premiums less return premiums and reinsurance premiums. It was not levied on gross receipts. The petitioner was entitled to deduct return premiums paid to insureds on cancellation of policies and the reinsurance premiums paid to other insurance companies, which is one of the elements of cost in the transaction of petitioner's business. The tax so paid— like an income tax and unlike an excise tax—was not deductible in determining net income subject to income tax. The tax so paid—again like an income tax and unlike an excise tax—reduced the income tax payable. Therefore, in substance and effect, such tax

payment had all the characteristics of an income tax and reduced, discharged and satisfied the income tax liability to the extent paid so that only the balance of the income tax liability remained to be paid.

The failure of the Circuit Court of Appeals to take these characteristics and the discharge of the income tax liability into consideration coupled with the Court's technical interpretation of what our law requires has resulted in the denial of the relief which Congress intended to grant to domestic taxpayers engaging in foreign enterprises. Therefore, it is respectfully asserted that the Court's decision is contrary to the principle announced by the Court in *Burnett* v. *Chicago Portrait Co.*, 285 U. S. 1, to the effect that the credit provisions of our law must be construed "*so as to achieve, and not defeat its aim*".

Wherefore, it is respectfully submitted that this petition for a writ of certiorari should be granted.

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APPENDIX

Statutes Involved

United States Statutes

Revenue Act of 1934, c. 277, 48 Stat. 680:

SEC. 23. DEDUCTIONS FROM GROSS INCOME.

In computing net income there shall be allowed as deductions:

* * * * * *

(c) *Taxes Generally.*—Taxes paid or accrued within the taxable year, except—

* * * * * *

(2) income, war-profits, and excess-profits taxes imposed by the authority of any foreign country or possession of the United States; but this deduction shall be allowed in the case of a taxpayer who does not signify in his return his desire to have to any extent the benefit of section 131 (relating to credit for taxes of foreign countries and possessions of the United States);

* * * * * *

SEC. 31. TAXES OF FOREIGN COUNTRIES AND POSSESSIONS OF UNITED STATES.

The amount of income, war-profits, and excess-profits taxes imposed by foreign countries or possessions of the United States shall be allowed as a credit against the tax, to the extent provided in section 131.

SEC. 131. TAXES OF FOREIGN COUNTRIES AND POSSESSIONS OF UNITED STATES:

(a) *Allowance of Credit.*—If the taxpayer signifies in his return his desire to have the benefits of this section, the tax imposed by this title shall be credited with:

(1) *Citizen and Domestic Corporation.*—In the case of a citizen of the United States and of a domestic corporation, the amount of any income, war-profits, and excess-profits taxes paid or accrued during the taxable year to any foreign country or to any possession of the United States: and

* * * * * *

SEC. 204. INSURANCE COMPANIES OTHER THAN LIFE OR MUTUAL.

(a) *Imposition of Tax.*—In lieu of the tax imposed by section 13 of this title, there shall be levied, collected, and paid for each taxable year upon the net income of every insurance company (other than a life or mutual insurance company) a tax as follows:

(1) In the case of such a domestic insurance company, 13¾ per centum of the amount of its net income * * *

(b) *Definition of Income, Etc.*—In the case of an insurance company subject to the tax imposed by this section—

(1) *Gross Income.*—"Gross income" means the sum of (A) the combined gross amount earned during the taxable year, from investment income and from underwriting income as provided in this subsection, computed on the basis of the underwriting and investment exhibit of the annual statement approved by the National Convention of Insurance Commissioners, and (B) gain during the taxable year from the sale or other disposition of property, and (C) all other items constituting gross income under section 22:

(2) *Net Income.*—"Net income" means the gross income as defined in paragraph (1) of this subsection less the deductions allowed by subsection (c) of this section;

* * * * * *

(c) *Deductions Allowed.*—In computing the net income of an insurance company subject to the tax imposed by this section there shall be allowed as deductions:

* * * * * *

(3) Taxes as provided in section 23 (c);

* * * * * *

SEC. 205. TAXES OF FOREIGN COUNTRIES AND POSSESSIONS OF UNITED STATES.

The amount of income, war-profits, and excess-profits taxes imposed by foreign countries or possessions of the United States shall be allowed as a credit against the tax of a domestic insurance company subject to the tax imposed by section 201 or 204, to the extent provided in the case of a domestic corporation in section 131, and in such cases "net income" as used in that section means the net income as defined in this Supplement.

Canadian Statutes

The Canadian statutes will be found in the record (R. 220-628). The pertinent provisions thereof are as follows:

Income War Tax Act, 1917, as amended by Revised Statutes of Canada, c. 97 (R. 400-628).

DEFINITIONS

2. In this Act, and in any regulations made hereunder, unless the context otherwise requires,

"Person."

(h) "person" includes any body corporate and politic and any association or other body, and the heirs, executors, administrators and curators or other legal representatives of such person, according to the law of that part of Canada tc which the context extends;

* * * * * *

"Taxpayer."

(k) "taxpayer" means any person paying, liable to pay, or believed by the Minister to be liable to pay, any tax imposed by this Act.

* * * * * *

PART I

Taxable Income

Taxable Income Defined

"Income."

3. For the purposes of this Act, "income" means the annual net profit or gain or gratuity, whether ascertained and capable of computation as being wages, salary, or other fixed amount, or unascertained as being fees or emoluments, or as being profits from a trade or commercial or financial or other business or calling, directly or indirectly received by a person from any office or employment, or from any profession or calling, or from any trade, manufacture or business, as the case may be whether derived from sources within Canada or elsewhere; and shall include the interest, dividends or profits directly or indirectly received from money at interest upon any security or without security, or from stocks, or from any other investment, and, whether such gains or profits are divided or distributed or not, and also the annual profit or gain from any other source including

* * * * * *

Deductions and Exemptions Allowed

Exemptions and deductions.

5. "Income" as hereinbefore defined shall for the purposes of this Act be subject to the following exemptions and deductions:—

Depreciation and exhaustion.

* * * * * *

Depletion between lessor and lessee.

* * * * * *

Interest on borrowed capital.

* * * * * *

Travelling expenses.

* * * * * *

Deductions for superannuation or pension fund.

* * * * * *

Donations—10 per cent of net taxable income exempt.

* * * * * *

Deductions from Income not Allowed

Deductions not allowed.

6. In computing the amount of the profits or gains to be assessed, a deduction shall not be allowed in respect of

* * * * * *

Special War Revenue Taxes.

* * * * * *

Deductions from Taxes Allowed

Deductions of payments under Special War Revenue Act.

7. A taxpayer shall be entitled to deduct from the tax that would otherwise be payable by him under this Act, the amount paid for corresponding periods under the provisions of Parts II and III of the Special War Revenue Act.

* * * * * *

PART III

Charging Provisions

Persons Taxable

Persons liable to income tax.

9. There shall be assessed, levied and paid upon the income during the preceding year of every person

(a) residing or ordinarily resident in Canada during such year; or

* * * * * *

a tax at the rates applicable to persons other than corporations and joint stock companies set forth in the First Schedule of this Act upon the amount of income in excess of the exemptions provided in this Act; Provided that the said rates shall not apply to corporations and joint stock companies.

2. Save as herein otherwise provided, corporations and joint stock companies, no matter how created or organized, shall pay a tax upon income at the rate applicable thereto set forth in the First Schedule of this Act.

* * * * * *

Special War Revenue Act, 1915, as amended by Statutes of Canada, 1932, 22-23 Geo. V, pp. 342, 344:

PART III*

SEC. 14. (1) Every company authorized under the laws of the Dominion of Canada, or of any province thereof to transact the business of insurance, other than a mutual company carrying on business on the premium deposit plan and an exchange, shall pay to the Minister a tax of one per centum upon the net premiums received by it in Canada, less net premiums paid for reinsurance to companies to which this subsection applies, during the year 1932 and each calendar year thereafter.

SEC. 17. (1) Every company to which subsection one of section fourteen of this Act applies shall, on or before the last day of July, 1932 make a return to the Superintendent on a form to be furnished by him showing the gross premiums received by it, and the rebates, return premiums on cancellation of policies and reinsurance premiums paid by it, during the six months ending on the last day of the month preceding the date on which such return is filed, and quarterly thereafter a return in the

* Part III was originally Part I (R. 66-67).

same form and with the same information covering the three months ending on the last day of the month preceding the date on which such return is filed.

* * * * * *

(4) Every such company shall at the time of making such return remit to the Superintendent the amount of the tax payable under the provisions of this Part in respect of the net premiums received by it during the period covered by the return.

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In the Supreme Court of the United States

OCTOBER TERM, 1940

No. 773

QUEEN INSURANCE COMPANY OF AMERICA,
PETITIONER

v.

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The opinion of the Board of Tax Appeals (R. 40–44) is reported at 40 B. T. A. 484. The opinion of the Circuit Court of Appeals (R. 220–221) is reported at 115 F. (2d) 341.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered November 20, 1940 (R. 221–222). Petition for a writ of certiorari was filed February 18, 1941. The jurisdiction of this Court is invoked

under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether the taxpayer, a domestic insurance company taxable under Section 204 of the Revenue Act of 1934, is entitled to a foreign tax credit in the amount of the Canadian income tax actually owed and paid by it during the taxable year, or is entitled to a larger credit in the amount of the Canadian income tax which would have been payable by it had it not been entitled under Canadian law to deduct from the income tax the amount of a premiums tax paid for the same period.

STATUTES INVOLVED

The pertinent federal and Canadian statutes are set forth in the Appendix, *infra,* pp. 8–12.

STATEMENT

The facts were stipulated before the Board of Tax Appeals (R. 62–216) and were found by the Board as stipulated (R. 40). They may be summarized as follows:

Petitioner is a stock insurance company incorporated under the laws of New York with its principal office in New York City (R. 62). During the year 1934 taxpayer transacted business in Canada and as a result incurred liability for and paid certain taxes to Canada (R. 64). Among the taxes paid was an excise tax imposed by Part III (Section 14)

of the Canadian Special War Revenue Act of 1915, as amended (R. 112; Appendix, *infra,* p. 11), and an income tax imposed by the Canadian Income War Tax Act of 1917, as amended (R. 64–67, 134–210). The excise tax imposed by the Special War Revenue Act was a one percent tax upon the premiums received in Canada (R. 112). The amount of excise tax paid by petitioner was $5,404.94 (R. 65).

Section 7 of the Canadian Income War Tax Act of 1917 provides that "A taxpayer shall be entitled to deduct from the tax that would otherwise be payable by him under this Act," the amount of excise tax paid under the Special War Revenue Act. Petitioner's net income in Canada during 1934 was $51,289.23; the applicable income tax rate was 13½%. Consequently, the taxpayer's income tax liablity would have been $6,924.05 were it not for the deduction allowed by Section 7. By reason of Section 7, however, petitioner was allowed a deduction of $5,404.94, representing the excise tax which it had paid. Accordingly, petitioner owed and paid a Canadian income tax for the year 1934 in the amount of $1,519.11 (R. 65, 70).

The Commissioner determined that petitioner was entitled to a foreign tax credit for the year 1934 in the amount of only $1,519.11, the amount of the Canadian income tax actually paid. The amount of the excise tax paid was allowed as a

deduction from gross income but not as a credit (R. 66). A deficiency was assessed accordingly (R. 26–33). The Board of Tax Appeals held that respondent was entitled to a credit of $6,924.05, rather than to a credit of only $1,519.11 (R. 43–44), but the Circuit Court of Appeals reversed, upholding the Commissioner's determination (R. 220–222).

ARGUMENT

The Revenue Act of 1934 allows a credit against the income tax of the amount of any "income, war-profits and excess-profits taxes" paid or accrued during the taxable year to any foreign country or to any possession of the United States. Sections 31, 131 (a) (1), 205, *infra,* pp. 8–9. Excise and other taxes paid or accrued to foreign countries may be taken as a deduction from the taxpayer's gross income but may not be the subject of a credit. Sections 23 (c), 204 (c) (3), *infra,* pp. 8, 9–10. See *Eitingon-Schild Co., Inc.* v. *Commissioner,* 21 B. T. A. 1163, 1164, 1174–1175.

It is entirely clear that the premiums tax which taxpayer paid to Canada pursuant to the Canadian Special War Revenue Act of 1915 was a business privilege or excise tax and not an income tax within the meaning of the Revenue Act of 1934. See *Pacific Insurance Company* v. *Soule,* 7 Wall. 433, 446, holding a very similar tax imposed by Section 105 of the Act of June 30, 1864, c. 173, 13 Stat. 223, 276, as amended, to be an "excise." See also

Equitable Life Society v. *Pennsylvania*, 238 U. S. 143, 146–147; *Provident Savings Ass'n.* v. *Kentucky*, 239 U. S. 103, 110, 116; *Brown* v. *Protective Life Insurance Co.*, 188 Ala. 166, 172; *People ex rel. Continental Ins. Co.* v. *Miller*, 177 N. Y. 515, 517; cf. *Maine* v. *Grand Trunk R'y. Co.*, 142 U. S. 217, 227–228; *Spreckels Sugar Refining Co.* v. *McClain*, 192 U. S. 397, 412, 413; *Flint* v. *Stone Tracy Co.*, 220 U. S. 107, 151; *Choctaw & Gulf R. R.* v. *Harrison*, 235 U. S. 292, 299.[1] And the court below so held, characterizing the premiums tax as "a Canadian excise" (R. 220).[2] The amount of that tax, therefore, may not be taken as a credit but only as a deduction.

The only remaining question is whether petitioner is entitled to a credit of an amount larger than the income tax which it actually owed and paid to Canada simply because, had it not been subject to the excise tax, it would have had to pay a larger income tax to Canada. The question answers itself. As the court below observed (R. 221), the taxpayer must "prove that he has paid an

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[1] Such a tax would also be regarded by British and Canadian Courts as an excise tax. See *The King* v. *Caledonian Collieries Ltd.* [1928], 3 D. L. R. 657 (Jud. Comm. Privy Council) (Exhibit H, R. 212–216).

[2] Whether the Canadian tax was an income tax or was an excise tax within the meaning of our statute depends, of course, upon our law. Cf. *Biddle* v. *Commissioner*, 302 U. S. 573, 578–579, 581; *F. W. Woolworth Co.* v. *United States*, 91 F. (2d) 973, 976–977 (C. C. A. 3d), certiorari denied, 302 U. S. 768.

actual income-tax, not that an income-tax would have been payable, if facts had been 'otherwise'."

Without any basis in the record, taxpayer asserts (Pet. 5) that for twenty years domestic insurance companies, including itself, "were allowed a credit for Canadian income taxes in an amount equal to the income tax liability under the Canadian Income War Tax Act, without reduction on account of the amount of tax paid under the Special War Revenue Act," and that the decision below reverses that practice. Petitioner cites no Treasury regulation or decision in support of its assertion, and so far as we have been able to ascertain, none exists. Whatever the actual practice of the Bureau may have been in the past, about which there may be much doubt,[3] it cannot alter the plain and unambiguous provisions of the statute. Cf. *Biddle* v. *Commissioner, supra,* p. 582; *Taft* v. *Commissioner,* 304 U. S. 351, 359; *Helvering* v. *N. Y. Trust Co.,* 292 U. S. 455, 467–468; *Koshland* v. *Helvering,* 298 U. S. 441, 447; *Helvering* v. *City Bank Co.,* 296 U. S. 85, 89.

CONCLUSION

The case was correctly decided by the court below. There is no conflict of decisions, and no important

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[3] See I. T. 3138, 1937–2 Cum. Bull. 230; I. T. 3211, 1938–2 Cum. Bull. 177; G. C. M. 11039, XI–2 Cum. Bull. 118 (1932); I. T. 2909, XIV–2 Cum. Bull. 136 (1935). Cf. G. C. M. 8478, IX–2 Cum. Bull. 224 (1930); I. T. 2620, XI–1 Cum. Bull. 44 (1932); I. T. 3193, 1938–1 Cum. Bull. 193.

question of federal law is involved. The petition should therefore be denied.

Respectfully submitted.

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MARCH 1941.

APPENDIX

UNITED STATES STATUTES

Revenue Act of 1934, c. 277, 48 Stat. 680:

SEC. 23. DEDUCTIONS FROM GROSS INCOME.

In computing net income there shall be allowed as deductions:

* * * * *

(c) *Taxes Generally.*—Taxes paid or accrued within the taxable year, except—

* * * * *

(2) income, war-profits, and excess-profits taxes imposed by the authority of any foreign country or possession of the United States; but this deduction shall be allowed in the case of a taxpayer who does not signify in his return his desire to have to any extent the benefits of section 131 (relating to credit for taxes of foreign countries and possessions of the United States);

* * * * *

SEC. 31. TAXES OF FOREIGN COUNTRIES AND POSSESSIONS OF UNITED STATES.

The amount of income, war-profits, and excess-profits taxes imposed by foreign countries or possessions of the United States shall be allowed as a credit against the tax, to the extent provided in section 131.

* * * * *

SEC. 131. TAXES OF FOREIGN COUNTRIES AND POSSESSIONS OF UNITED STATES.

(a) *Allowance of Credit.*—If the taxpayer signifies in his return his desire to have the

benefits of this section, the tax imposed by this title shall be credited with:

(1) *Citizen and Domestic Corporation.*—In the case of a citizen of the United States and of a domestic corporation, the amount of any income, war-profits, and excess-profits taxes paid or accrued during the taxable year to any foreign country or to any possession of the United States; and

* * * * *

(b) *Limit on Credit.*—The amount of the credit taken under this section shall be subject to each of the following limitations:

(1) The amount of the credit in respect of the tax paid or accrued to any country shall not exceed the same proportion of the tax against which such credit is taken, which the taxpayer's net income from sources within such country bears to his entire net income for the same taxable year; and

(2) The total amount of the credit shall not exceed the same proportion of the tax against which such credit is taken, which the taxpayer's net income from sources without the United States bears to his entire net income for the same taxable year.

* * * * *

SEC. 204. INSURANCE COMPANIES OTHER THAN LIFE OR MUTUAL.

(a) *Imposition of Tax.*—In lieu of the tax imposed by section 13 of this title, there shall be levied, collected, and paid for each taxable year upon the net income of every insurance company (other than a life or mutual insurance company) a tax as follows:

(1) In the case of such a domestic insurance company, 13¾ per centum of the amount of its net income * * *.

* * * * *

(b) *Definition of Income, Etc.*—In the case of an insurance company subject to the tax imposed by this section—

(1) *Gross Income.*—"Gross income" means the sum of (A) the combined gross amount earned during the taxable year, from investment income and from underwriting income as provided in this subsection, computed on the basis of the underwriting and investment exhibit of the annual statement approved by the National Convention of Insurance Commissioners, and (B) gain during the taxable year from the sale or other disposition of property, and (C) all other items constituting gross income under section 22;

(2) *Net Income.*—"Net income" means the gross income as defined in paragraph (1) of this subsection less the deductions allowed by subsection (c) of this section;

* * * * *

(c) *Deductions Allowed.*—In computing the net income of an insurance company subject to the tax imposed by this section there shall be allowed as deductions:

* * * * *

(3) Taxes as provided in section 23 (c);

* * * * *

SEC. 205. TAXES OF FOREIGN COUNTRIES AND POSSESSIONS OF UNITED STATES.

The amount of income, war-profits, and excess-profits taxes imposed by foreign countries or possessions of the United States shall be allowed as a credit against the tax of a domestic insurance company subject to the tax imposed by section 201 or 204, to the extent provided in the case of a domestic corporation in section 131, and

in such cases "net income" as used in that section means the net income as defined in this Supplement.

CANADIAN STATUTES

The Canadian statutes will be found in the record, pp. 74–210. The particularly pertinent provisions thereof are as follows:

Special War Revenue Act, 1915, as amended by Statutes of Canada, 1932, c. 54, 22–23 Geo. V, pp. 342, 344:

PART III [4]

SEC. 14. (1) Every company authorized under the laws of the Dominion of Canada, or of any province thereof to transact the business of insurance, other than a mutual company carrying on business on the premium deposit plan and an exchange, shall pay to the Minister a tax of one per centum upon the net premiums received by it in Canada, less net premiums paid for reinsurance to companies to which this subsection applies, during the year 1932 and each calendar year thereafter.

* * * * *

SEC. 17. (1) Every company to which subsection one of section fourteen of this Act applies shall, on or before the last day of July, 1932, make a return to the Superintendent on a form to be furnished by him showing the gross premiums received by it, and the rebates, return premiums on cancellation of policies and reinsurance premiums paid by it, during the six months ending on

[4] Part III was originally Part I (R. 66–67). The provisions of Sections 14 and 17 quoted here are found in the record at pp. 112, 113–114.

the last day of the month preceding the date on which such return is filed, and quarterly thereafter a return in the same form and with the same information covering the three months ending on the last day of the month preceding the date on which such return is filed.

* * * * *

(4) Every such company shall at the time of making such return remit to the Superintendent the amount of the tax payable under the provisions of this Part in respect of the net premiums received by it during the period covered by the return.

Income War Tax Act, 1917, as amended by Revised Statutes of Canada, c. 97, Section 7, p. 2143:

PART II

SEC. 7. A taxpayer shall be entitled to deduct from the tax that would otherwise be payable by him under this Act, the amount paid for corresponding periods under the provisions of Parts II and III of the Special War Revenue Act.

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